

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 10

RINKER SOUTH CENTRAL REGION, EAST  
TENNESSEE CONCRETE DIVISION<sup>1</sup>

Employer

and

Case 10-RC-15563

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 519<sup>2</sup>

Petitioner

REGIONAL DIRECTOR'S DECISION AND

DIRECTION OF ELECTION

The Employer, Rinker South Central Region, East Tennessee Concrete Division, is a Delaware corporation engaged in the production, sale and distribution of concrete at various facilities located in Eastern Tennessee and Southern Virginia. The Petitioner, International Brotherhood of Teamsters, Local 519, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit consisting of all full-time mixer drivers and loader-operators<sup>3</sup> employed by the Employer at its West Knoxville, Tennessee plant, its Neyland Drive plant in Knoxville, Tennessee, its Rockford,

<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> The name of the Petitioner appears as amended at the hearing.

<sup>3</sup> The Petitioner amended the petition to include the loader-operators.

Tennessee plant, and its Morristown, Tennessee plant, excluding all costers, dispatchers,<sup>4</sup> office clerical employees, managers, professional employees, guards and supervisors as defined in the Act. A hearing officer of the Board held a hearing and the Employer filed a brief, which was duly considered.

There are three issues herein. First, the Employer objects to the scope of the unit sought and argues that employees at four other facilities should also be included. The four other facilities are in Bristol, Virginia, Kingsport, Tennessee, Greeneville, Tennessee, and Gray, Tennessee, the latter is also referred to as the Boones Creek plant. Second, the Petitioner, contrary to the Employer, contends that the “supervisor/lead” employees are Section 2(11) supervisors and, therefore, should be excluded from any unit found appropriate. Third, the Employer contends that its tanker truck drivers, tanker truck coordinator, tandem truck driver, batchers, mechanics, and maintenance employees should be included in any unit found appropriate.

I have considered the evidence and the arguments presented by the parties on each of the issues. As discussed below, I have concluded that the functional integration of the Employer’s concrete operation is so substantial as to negate the separate identity of the petitioned-for unit. Nevertheless, I shall not dismiss the petition. Rather, I shall direct an election in the broader multi-location unit urged by the Employer since the Petitioner is willing to participate therein. See footnote 12, infra. I have determined that the “supervisor/leads” should vote subject to the Board’s challenged ballot procedure because the evidence is inconclusive as to their status and unit placement. Finally, I have also determined that the tanker truck drivers, tanker truck

<sup>4</sup>The parties stipulated at the hearing to the exclusion of all costers and dispatchers. As the record evidence establishes that Joel Baxley is the dispatcher at the Morristown plant and Mike Cruet is the dispatcher at the Greeneville plant and the parties have stipulated to the exclusion of this classification, they are excluded from the unit found appropriate herein.

coordinator, tandem truck driver, batchers, mechanics, and maintenance employees share a sufficient community of interest with the employees in the petitioned-for unit, and I shall, therefore, include those classifications in the unit as well.

To provide a context for my discussion of these issues, I will first provide an overview of the Employer's operations. I will then present in detail the facts and reasoning that support each of my conclusions on the issues.

## **I. OVERVIEW OF THE EMPLOYER'S OPERATIONS**

The Employer is engaged in the production, sale and delivery of ready-mix concrete from its eight facilities, two of which are located in Knoxville, and one each in Rockford, Morristown, Gray, Kingsport, and Greeneville, Tennessee, and one in Bristol, Virginia. The Employer's central office, as well as a shop where four mechanics work, is also located in Knoxville, Tennessee.<sup>5</sup> The Employer's ready-mix concrete product is a combination of cement, coarse and fine aggregate, pozzalans, and water, all of which is mixed in the delivery trucks, while en route to the customer's site. The ready-mix concrete is typically used for a variety of construction purposes.

The Employer employs in total at all locations the following unit employees: 82 mixer drivers and loader-operators, two batchers, seven supervisor/leads, six tanker truck drivers, seven mechanics, three maintenance employees, and one tandem driver. At the West Knoxville, Neyland, Rockford, and Morristown plants, locations deemed appropriate by the Petitioner, the Employer employs a total of approximately 47 mixer drivers and loader-operators, one batcher,

<sup>5</sup> The addresses of the facilities are as follows: (1) the shop and central office in Knoxville, 2209 Blount Avenue, (2) the West Knoxville plant in Knoxville, 10509 Lexington Drive, (3) The Neyland plant in Knoxville, 2200 Neyland Drive, (4) the Rockford plant, 547 National Drive, (5) the Morristown plant, 663 South Sugar Hollow Road, (6) the Boones Creek plant in Gray, 102 Watertank Road, (7) the Kingsport plant and shop, 1543 South Wilcox Drive; (8) the Greeneville plant, 1532 Industrial Road, (9) the Greeneville shop, 446 Fairgrounds Road; and (10) the Bristol, Virginia plant, 1360 Janie Mammit Drive.

three supervisor/leads, and five tanker truck drivers. Thus, the petitioned-for unit has a total employee complement of 47, while the unit deemed appropriate by the Employer includes 108 employees.

At the West Knoxville plant, there are approximately 10 mixer drivers and loader operators and no supervisor/lead employees. At the Neyland plant, there are approximately 15 mixer drivers and loader operators, one supervisor/lead, and four tanker truck drivers. At the Rockford plant, there are approximately 11 mixer drivers and loader operators and one supervisor/lead. At the Morristown plant, there are approximately 11 mixer drivers and loader operators, one supervisor/lead, one tanker truck driver, and one batcher. At the Bristol plant, there are approximately five mixer drivers and loader operators and one supervisor/lead. At the Boones Creek plant, there are approximately 12 mixer drivers and loader operators and one supervisor/lead. At the Kingsport plant, there are approximately 10 mixer drivers and loader operators, one supervisor/lead, and one mechanic. At the Greeneville plant, there are approximately eight mixer drivers, one supervisor/lead, three tanker truck drivers, and one tandem driver. In addition, there are four mechanics and one maintenance employee working out of a shop at the Blount Avenue location in Knoxville, and two mechanics and one maintenance employee working out of a shop in Greeneville. The Greeneville shop is separate from the Greeneville plant.

## **II. SCOPE OF THE UNIT**

As noted above, the Petitioner seeks an election among unit employees at only four of the Employer's eight locations. The Employer objects to the petitioned-for unit contending that employees at its four other facilities in Bristol, Boones Creek, Kingsport and Greeneville, must

be included in the unit.<sup>6</sup> At the outset, it should be noted that there is nothing in the statute which requires that the unit for bargaining sought by the Petitioner be the only appropriate unit, or the ultimate unit, or the most appropriate unit. The Act requires only that the unit be an appropriate one. Taylor Bros., Inc., 230 NLRB 861, 869 (1977). Thus, the question to be decided herein is whether the unit sought by the Petitioner is *an* appropriate unit under the Act. Although a petitioner's unit preference is a relevant consideration, it is not dispositive. Airco, Inc., 273 NLRB 348 (1984). In determining an appropriate unit in multi-facility situations, the Board has traditionally considered various factors, such as centralized control of daily operations and labor relations, similarity of skills, functions, and general working conditions; degree of employee and equipment interchange; geographic separation; and bargaining history, if any.<sup>7</sup>

The Employer's facilities are located at various distances between Knoxville, Tennessee and Bristol, Virginia in order to efficiently service the Employer's customers throughout the area. There are 13 miles between the Rockford plant and the West Knoxville plant, 12 miles between the West Knoxville plant and the Neyland plant, 37 miles between the Neyland plant and the Morristown plant, and 27 miles between the Morristown plant and the Greeneville plant. The Greeneville plant is located 26 miles from the Kingsport plant, which is located seven miles from the Boones Creek plant in Gray, which is located 22 miles from the Bristol plant. The company maintains a fleet of approximately 90 mixer trucks, two conveyor trucks and eight tanker trucks in total at all its locations.

<sup>6</sup>The Employer's proposed unit includes four mechanics and one maintenance employee at the shop on Blount Avenue in Knoxville and two mechanics and one maintenance employee at the shop in Greeneville. The Blount Avenue location is less than four miles from the Neyland facility and the Greeneville shop is two miles from the Greeneville facility.

<sup>7</sup>There is no history of collective bargaining at any of the eight locations.

It is clear from the testimony of the Employer's vice-president, Joseph Fowler, that the Employer runs a highly centralized operation. All aspects of the Employer's operations, including all purchasing decisions, strategic planning, employee relations, accounting, and quality control, emanate from its central office (also referred to as the main business office) on Blount Avenue in Knoxville. At the main business office, the Employer maintains all concrete mix designs, customer base records, and files. All plants receive their job tickets from the main office. These job tickets show the customer, the location of the job, the mix design and quantity, and the truck and driver to be used to make the delivery. In fact, Fowler is personally involved in any large or complicated job, including determining the cost of the job and the price to be charged. After the delivery is completed, the customer signs the ticket which is sent back to Knoxville for billing. The Employer's entire operation is run from the main business office, including taking customer orders, processing records related to billing, invoicing and inventory, human resources<sup>8</sup>, payroll, insurance, and customer credit information. A centralized computer system is located at the main business office which allows management to pull reports and judge the performance of all eight plants.

All management executives work out of the Blount Avenue location, including Managers John Loven and Phil Johnson and General Superintendent Don Reed. Loven is in charge of the Bristol, Boones Creek, Kingsport, and Greeneville plants, also known as the TriCity or Loven plants. Johnson oversees the West Knoxville, Neyland, Rockford, and Morristown plants, also known as the Knoxville plants. Reed directly supervises the mechanics and maintenance employees. Loven, Johnson, and Reed are responsible for all hiring and firing decisions at their respective facilities.

<sup>8</sup>Human Resources Clerk Sherry Proch is also located at the main office on Blount Avenue in Knoxville and is responsible for payroll, employee benefits, and related functions.

Customer orders are normally assigned by dispatchers<sup>9</sup> to the geographically closest plant. However, other factors such as workload and the perishable nature of the cement mixture routinely require plants, other than the originating plant, to make or assist in making deliveries. Although mixer drivers are domiciled at a particular plant, they assist at other plants throughout the day on a daily basis. In addition, the record reflects that job openings at any of the eight plants are communicated to the employees at all eight plants. Currently, some employees at the Tri-Cities plants have been offered positions in Knoxville because of the increasing workload in the Knoxville area. There is also interchange of equipment. At various times, the trucks assigned to one facility are operated out of another facility.

The employees at all eight plants are subject to the same disciplinary rules and procedures. They all enjoy the same health insurance options, paid holidays, and retirement benefits. Employees at all eight plants receive yearly performance evaluations and work under the same pay system. Although the employees at the Bristol, Boones Creek, Kingsport, Greeneville, and Morristown plants currently do not enjoy the same amount of paid time-off as the employees at the other plants, it is expected that this disparity will be corrected by the spring of 2006. The maximum pay rate of \$11.50 per hour for the petitioned-for mixer drivers and loader operators at the Morristown plant is identical to that for the mixer drivers and loader operators at the Greeneville, Boones Creek, Kingsport, and Bristol locations. The maximum rate for these classifications at the remaining three plants is \$14.11 per hour. The drivers' wage scale is set by the main office.

<sup>9</sup>The Employer employs a total of six dispatchers, two of whom are located in Knoxville, two in Kingsport, and one each in Morristown and Greeneville. The Knoxville dispatchers service the Neyland, West Knoxville, and Rockford plants. The Kingsport dispatchers service the Boones Creek, Bristol and Kingsport plants, while the Morristown and Greeneville dispatchers service their respective plants.

The record shows that there are no difference in functions or benefits among job classifications at the eight locations. The duties of the mixer drivers and loader operators are the same at all eight plants.

The drivers and loader-operators are supervised by one of the two managers located at the Blount Avenue location. All applications for employment, interviews of applicants and hiring decisions are handled from the same Blount Avenue main business office.

Based on the foregoing and weighing all of the factors considered by the Board, I find that the Employer's ready-mix operation is highly integrated. Moreover, the functions of each classification of unit employees are interchangeable, with employees and equipment switched from location to location on an as-needed basis.

I am also persuaded that the centralized control of labor and personnel relations supports the Employer's contention that all eight plants should be included in an appropriate unit. Thus, the record establishes that Vice-President Fowler and other management officials exercise control over labor relations, with final authority over hires, layoffs, wages, benefits and other terms of employment, such as temporary assignments at other facilities. See R&D Trucking, Inc., 327 NLRB 309 (1999); and Novato Disposal Services, Inc., 328 NLRB 820 (1999).

Another factor supporting the inclusion of all eight facilities is the evidence of interchange among unit employees at all eight locations. As noted above, the Employer's VicePresident testified that temporary transfers among drivers at all eight facilities occur daily. Accordingly, notwithstanding the geographical separation among the eight facilities, based on the functional integration, high degree of centralized control of labor relations, common terms and conditions of employment and significant temporary interchange among employees, I find that the Employer has demonstrated that the functional integration of its operations is so

substantial as to negate the appropriateness of the unit sought by the Petitioner. I shall, therefore, direct an election in the broader eight -facility unit urged by the Employer.

### **III. COMPOSITION OF UNIT**

Normally the Employer employs six tanker drivers. Currently, however, there are eight tanker drivers employed by the Employer, two of whom are mixer drivers, temporarily working as tanker drivers. Three to four times per day, the tanker drivers deliver cement and fly ash, the ingredients used to make concrete, to the eight plants. There are four tanker drivers based out of the Neyland plant, all of whom were mixer drivers prior to becoming tanker drivers.

Like mixer drivers and loader operators, tanker drivers have a commercial driver's license (CDL) and perform mixer driver duties on an as-needed basis, duties which they have performed several times this year. After receiving their daily work assignments, the tanker drivers consult with the tanker coordinator, who is located at the Greeneville plant, regarding their daily work schedules. In addition to his responsibility with regard to the tanker drivers, the tanker coordinator works as a loader at the Greeneville plant. Like the tanker drivers, the tanker coordinator is paid on an hourly basis.

There is one tandem truck driver, who works out of the Greeneville plant. He is responsible for delivering the sand and stone used in making concrete to the Morristown, Greeneville, Boones Creek, and Kingsport plants.

There are two batchers, one in Morristown and the other in Greeneville. Batching is the process of loading the materials from the bins and silos into the mixer trucks. The batcher is responsible for transferring the mix formula and quantity data from the delivery ticket to a computer for processing (also referred to as batching the concrete). All eight plants use the same batching and computer system. Batchers have direct contact with mixer drivers, including

directing mixer drivers as they position their trucks at the delivery point at the plant and providing the drivers with their delivery tickets.

There are seven mechanics, four of whom work out of the Blount Avenue location, two at the shop located two miles from the Greeneville plant, and one at the Kingsport plant. The mechanics maintain and repair company vehicles, including the trucks operated by the mixer drivers and the loaders operated by the loader operators. The mechanics are also commercial licensed drivers and perform some mixer driver duties at times. Mechanics at the Greeneville and Kingsport plants operate mixer trucks about every couple of weeks. Two mechanics are former mixer drivers. The mechanics make rounds to the various plants every morning to perform minor repairs on trucks and, when required, will go to a customer site to service a truck. Like the mixer drivers, the mechanics' daily work schedules are determined by the dispatchers assigned to service their facility.

There are three maintenance employees, one at the Blount Avenue location, one at the Greeneville shop, and the one at the Kingsport plant. The maintenance employees are responsible for making repairs at the plants, such as repairing holes in bins and repairing or replacing torn belts and motors. The maintenance employees also assist in performing certain truck repairs, especially repairs that require welding or drum repairs.

Based on the record evidence presented, I find that the tanker truck drivers, tanker coordinator, tandem truck driver, batchers, mechanics, and maintenance employees share such functional integration and common terms and conditions of employment with the mixer drivers and loader operators that they should be included in the unit. This is particularly the case given the substantial similarities in compensation, duties and working conditions among the tanker truck drivers, tanker coordinator, tandem truck driver, batchers, mechanics, and maintenance

employees and the employees the Petitioner seeks to represent. Accordingly, I find a unit which includes the tanker truck drivers, tanker coordinator, tandem truck driver, batchers, mechanics, and maintenance employees to be an appropriate unit for the purposes of collective bargaining.

#### **IV. SUPERVISORY ISSUES**

The Petitioner, contrary to the Employer, contends that the supervisor/leads<sup>10</sup> are statutory supervisors and, therefore, should be excluded from the unit.<sup>11</sup> Only if the exercise of Section 2(11) authority is not merely routine, clerical, perfunctory, or sporadic in nature, but requires the use of independent judgment, is a finding of supervisory status appropriate. Byers Engineering Corp., 324 NLRB 740, 741 (1997).

The record reflects that the supervisor/leads do not have the authority to hire, review applications for employment, interview job applicants, issue written discipline, suspend employees, fire employees, perform employee evaluations, grant time off, grant wage increases, transfer employees, make job assignments or assign overtime. Furthermore, they cannot make purchases other than for minor items, such as toilet paper. Although the record evidence established that the supervisor/leads enjoy the same benefit package as the petitioned-for hourly employees, the evidence also established that the supervisor/leads are salaried employees. Significantly, however, the record is silent as to the amount the supervisor/leads are paid. According to the record testimony, most supervisor/lead employees perform batching duties.

<sup>10</sup> The supervisor/leads employed by the Employer are Randy True at the Neyland plant, Rick Stutsman at the Rockford plant, Brad Buchanan at the Bristol plant, Roger Moody at the Boones Creek plant, John Pierce at the Kingsport plant, and Mike Cruey at the Greeneville plant and Joel Baxley at the Morristown plant. The Employer does not currently employ a supervisor/lead at the West Knoxville plant. Notwithstanding the reference to Joel Baxley and Mike Cruey as supervisor/leads, having already concluded, *supra*, that they are excluded as dispatchers pursuant to the parties' agreement, I do not find it necessary to make a finding regarding their status as supervisor/leads.

<sup>11</sup> The parties stipulated, and I find, that Vice-President Joe Fowler, Manager John Loven, Manager Phil Johnson and General Superintendent Don Reed, each of whom possess and exercise the authority to hire, fire, suspend, discipline and transfer employees, are statutory supervisors within the meaning of the Act.

Once again, however, the record is silent as to the percentage of time the supervisor/leads spend engaging in batching duties. Driver complaints about hours are handled by dispatch and complaints about truck assignments are handled by Managers Johnson or Loven. The record reflects that senior drivers are responsible for training new drivers, by having the new driver ride with the senior driver during the first few days of employment. Accordingly, there is no evidence suggesting that the supervisor/leads play a role in training. Supervisor/leads can, however, issue oral warnings for attendance and safety violations. The record evidence establishes that the supervisor/leads exercise independent authority with regard to issuing oral warnings. The oral warnings can be reduced to writing and forwarded to the managers at the Blount Avenue location for placement in the employee's record. The record is silent as to the how often these oral warnings are reduced to writing and placed in the employees' files. There is no independent review by managers of the facts surrounding the issuance of these oral warnings. If the supervisor/leads have a repeated problem with an employee after an oral warning has been issued, it appears that they must turn to the managers at the main business office to take action. While the record is less than clear, it seems that the documented oral warnings issued by the supervisor/lead employees can be and are relied upon by management as prior discipline under its progressive disciplinary policy.

It is well settled that secondary indicia are not dispositive in the absence of evidence indicating the existence of one of the primary indicia of supervisory status set out in the statute. North Jersey Newspapers Co., 322 NLRB 394 (1996). The existence of a pay differential has been held to be such a "secondary" indicator. McClatchy Newspapers, Inc., 307 NLRB 773 (1992). In addition, the Board has held that issuing oral reprimands, standing alone, is too minor a disciplinary function to rise to the level of statutory supervisory authority. Passavant Health

Center, 284 NLRB 887, 889 (1987). However, in this case, the record contains insufficient evidence to establish the degree of pay differential, the amount of time supervisor/leads spend performing unit work, how often the oral warnings are elevated to the status of written warnings, or how often oral warnings issued by supervisor leads are used to support subsequent discipline. Accordingly, it cannot be determined if indeed, the supervisor/leads possess any primary indicia of supervisory status. Additionally, if it is concluded that the supervisor/leads are not supervisors under the Act, it appears that there would be no onsite supervisor at a number of the Employer locations. Although not determinative, the ratio of supervisory to nonsupervisory employees is a factor to be considered. Based on the present record evidence and applicable law, I am unable to conclude whether the supervisor/leads are properly included in the unit or whether they should be excluded. Accordingly, I find that supervisory leads should vote subject to challenge by any party.

## **V. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

All full-time mixer drivers, loader operators, tanker truck drivers, tanker coordinators, tandem truck drivers, batchers, mechanics, and maintenance employees employed by the Employer in its ready-mix operations at its West Knoxville, Neyland, Rockford, Morristown, Boones Creek, Kingsport, and Greeneville facilities in Tennessee and its Bristol, Virginia facility, excluding all managers, costers, dispatchers, office clerical employees, professional

employees, guards and supervisors as defined by the Act.

## **VI. DIRECTION OF ELECTION<sup>12</sup>**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the International Brotherhood of Teamsters, Local 519. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who are employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which

<sup>12</sup>In view of the fact that the Petitioner has indicated that it is willing to proceed to an election in the broader unit found appropriate herein, this Direction of Election is conditioned upon the Petitioner providing an adequate showing of interest in the enlarged unit by November 18, 2005.

commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military Services of the United States may vote if they appear in person at the polls. Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began; and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

**B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized. This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election, only after I shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

To be timely filed, the list must be received in the Regional Office, Suite 1000, Harris Tower, 233 Peachtree Street, N.E., Atlanta, Georgia 30303, on or before November 11, 2005. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (404) 331-2858. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

## **VI. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, DC 20570-0001. This request must be

received by the Board in Washington by 5:00 P.M., (EST) on November 18, 2005. The request may **not** be filed by facsimile.

Dated at Atlanta, Georgia, on this 4th day of November, 2005.



Martin M. Arlook, Regional Director  
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